

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 15, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1113

Introduced by Senator Wolk

February 17, 2010

An act to amend Sections 19048, 19334, and 19346 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1113, as amended, Wolk. Franchise Tax Board: tax administration: determinations.

Under existing law the State Board of Equalization serves as the appellate body for disputes arising from actions of the Franchise Tax Board. If a taxpayer disagrees with the decision of the State Board of Equalization, that taxpayer may, after payment of the disputed tax, file an action with the superior court in any city or city and county in which the Attorney General has an office.

This bill would, for determinations issued by the State Board of Equalization on or after January 1, 2011, authorize the Franchise Tax Board to bring an action for a trial de novo in superior court to determine the deficiency amount, the amount of refund or credit, or ~~allowance~~ *disallowance* of interest that was the subject of the determination of the State Board of Equalization, where the amount of the deficiency, overpayment, or disallowance of interest exceeds \$100,000 for taxpayers subject to tax imposed under the Personal Income Tax Law, or \$1,000,000 for taxpayers subject to tax imposed under the Corporation Tax Law. This bill would also authorize a taxpayer to file a motion to

change the venue to a venue closer to the taxpayer's principal residence or principal place of business.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19048 of the Revenue and Taxation Code
2 is amended to read:

3 19048. (a) Except as provided in subdivision (b), the board's
4 determination becomes final upon the expiration of 30 days from
5 the time of the determination unless within the 30-day period the
6 taxpayer or the Franchise Tax Board files a petition for rehearing
7 with the board. In that event the determination becomes final upon
8 the expiration of 30 days from the time the board issues its opinion
9 on the petition.

10 (b) (1) Notwithstanding any other provision of law, within 90
11 days after the determination of the board would otherwise have
12 become final, the Franchise Tax Board may file a suit in superior
13 court to determine the deficiency. A suit in superior court to
14 determine a deficiency shall be a trial de novo by the court as to
15 law and facts, there shall be a rebuttable presumption that the notice
16 of action of the Franchise Tax Board with respect to the protest of
17 a proposed deficiency assessment is correct, and the taxpayer shall
18 have the burden of proof that the notice of action of the Franchise
19 Tax Board is incorrect.

20 (2) Any action filed by the Franchise Tax Board under this
21 subdivision shall be commenced and tried in ~~any~~ *the* city or city
22 and county in which the Attorney General maintains an office *that*
23 *is located nearest to where the taxpayer resides or maintains a*
24 *principal place of business. In the event the taxpayer no longer*
25 *resides or has a principal place of business in the state, the*
26 *Franchise Tax Board may bring the action in any city or city and*
27 *county where the Attorney General maintains an office.* A taxpayer
28 may file a motion to change the venue of any suit filed under this
29 subdivision to a venue closer to the taxpayer's principal residence
30 or principal place of business and the motion shall not be opposed
31 by the Attorney General or the counsel for the Franchise Tax
32 Board.

(3) This subdivision shall apply to determinations of the board issued on or after January 1, 2011, where the amount of the deficiency, including tax, additions to tax, penalties, interest, additional amounts, and fees, exceeds one hundred thousand dollars (\$100,000) for taxpayers subject to tax imposed under Part 10 (commencing with Section 17001), or one million dollars (\$1,000,000) for taxpayers subject to tax imposed under Part 11 (commencing with Section 23001).

SEC. 2. Section 19334 of the Revenue and Taxation Code is amended to read:

19334. (a) Except as provided in subdivision (b), the determination of the board is final upon the expiration of 30 days from the date of the determination unless within the 30-day period, the taxpayer or Franchise Tax Board files a petition for rehearing with the board. In that event the determination becomes final upon the expiration of 30 days from the date the board issues its opinion on the petition.

(b) (1) Notwithstanding any other provision of law, within 90 days after the determination of the board would otherwise have become final, the Franchise Tax Board may file a suit in superior court to determine the overpayment. A suit in superior court to determine an overpayment shall be a trial de novo by the court as to law and facts, there shall be a rebuttable presumption that the notice of action of the Franchise Tax Board with respect to the refund claim is correct, and the taxpayer shall have the burden of proof that the notice of action of the Franchise Tax Board is incorrect.

(2) Any action filed by the Franchise Tax Board under this subdivision shall be commenced and tried in ~~any~~ the city or city and county in which the Attorney General maintains an office *that is located nearest to where the taxpayer resides or maintains a principal place of business. In the event the taxpayer no longer resides or has a principal place of business in the state, the Franchise Tax Board may bring the action in any city or city and county where the Attorney General maintains an office.* A taxpayer may file a motion to change the venue of any suit filed under this subdivision to a venue closer to the taxpayer's principal residence or principal place of business and the motion shall not be opposed by the Attorney General or the counsel for the Franchise Tax Board.

(3) This subdivision shall apply to determinations of the board issued on or after January 1, 2011, where the amount of the overpayment exceeds one hundred thousand dollars (\$100,000) for taxpayers subject to tax imposed under Part 10 (commencing with Section 17001), or one million dollars (\$1,000,000) for taxpayers subject to tax imposed under Part 11 (commencing with Section 23001).

SEC. 3. Section 19346 of the Revenue and Taxation Code is amended to read:

19346. (a) Except as provided in subdivision (b), the determination of the board is final upon the expiration of 30 days from the date of the determination unless within the 30-day period, the taxpayer or Franchise Tax Board files a petition for rehearing with the board. In that event the determination becomes final upon the expiration of 30 days from the date the board issues its opinion upon the petition.

(b) (1) Notwithstanding any other provision of law, within 90 days after the determination of the board would otherwise have become final, the Franchise Tax Board may file a suit in superior court to determine the disallowance of interest. A suit in superior court to determine a disallowance of interest shall be a trial de novo by the court as to law and facts, there shall be a rebuttable presumption that the notice of action of the Franchise Tax Board with respect to the disallowance of interest is correct, and the taxpayer shall have the burden of proof that the notice of action of the Franchise Tax Board is incorrect.

(2) Any action filed by the Franchise Tax Board under this subdivision shall be commenced and tried in ~~any~~ *the* city or city and county in which the Attorney General maintains an office *that is located nearest to where the taxpayer resides or maintains a principal place of business. In the event the taxpayer no longer resides or has a principal place of business in the state, the Franchise Tax Board may bring the action in any city or city and county where the Attorney General maintains an office.* A taxpayer may file a motion to change the venue of any suit filed under this subdivision to a venue closer to the taxpayer's principal residence or principal place of business and the motion shall not be opposed by the Attorney General or the counsel for the Franchise Tax Board.

1 (3) This subdivision shall apply to determinations of the board
2 issued on or after January 1, 2011, where the amount of the
3 disallowance of interest exceeds one hundred thousand dollars
4 (\$100,000) for taxpayers subject to tax imposed under Part 10
5 (commencing with Section 17001), or one million dollars
6 (\$1,000,000) for taxpayers subject to tax imposed under Part 11
7 (commencing with Section 23001).

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